

**RUMSON PLANNING BOARD  
REGULAR MEETING  
JUNE 2, 2008  
MINUTES**

Chairman Lospinuso called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. The requirements of the Open Public Meetings Act were stated as met. The roll was called, with the following members present: Lospinuso, Rubin, Casazza, Campbell, Ekdahl, Shanley, York, Gummer, Vaughan, Hewitt, White. Also present: Michael Steib, Board Attorney, Bonnie Heard (T&M Assoc.), Fred Andre (Zoning Officer), and State Shorthand services.

**Hollis Colquhoun, 50 Bingham Ave., Minor Subdivision**

Chairman Lospinuso announced that a completeness review is needed for this application. Kevin Kennedy, attorney, said they would like to have the application deemed complete, after which they would ask that it be adjourned to the July meeting. Mr. Steib has reviewed the service, which is in order. The T&M completeness review was addressed at this time. Ms. Heard noted that there are several outstanding items that need to be addressed, although she would have no objection to waiving the requirements at this time, with the stipulation that they may be required upon approval.

- Easements
- Wetlands LOI
- Performance Guaranty
- Statement from Utilities
- Fees

Councilman Rubin moved to deem the application complete at this time, and Mr. Casazza seconded.

Roll Call Vote: Ayes – Rubin, Casazza, Campbell, Ekdahl, Shanley, York, Gummer, Hewitt, White  
Nays – None

Abstain – Lospinuso, Vaughan

Motion carried.

The application will be carried to the July 7<sup>th</sup> meeting. No further notice will be required.

**Paula Schildge & Stacey Cohen, 88 & 90 Buena Vista Ave., Continued Minor Subdivision**

Roger Foss, attorney, appeared on behalf of the applicants. He explained that this application has been continued from a previous hearing. They have submitted additional exhibits:

- A-18 – Plot plan for new Lot 8.02, dated 5/22/08;
- A-29 – Topographical map, dated 5/19/08;
- A-20 – T&M review from 5/29/08.

Mr. Foss would like to address the trees on the proposed new lot, and he introduced William McHeffey, Professional Engineer and Planner. The Board accepted his qualifications. Mr. McHeffey is familiar with this property and has visited it several times. He is familiar with the drainage pattern in the area, noting that most of Conover Lane flows to the south. Buena Vista drains toward the river. He prepared the plan before the Board this evening. He has also reviewed the Storm Water Management Ordinance in Rumson.

Mr. McHeffey explained that the grading on Lot 8.02 will not change. A proposed dwelling location is now shown on Lot 8.02, indicating the largest footprint allowed. The applicant would comply with the storm water drainage under the ordinance. He explained the grading on Lot 8.02, noting that the water would drain to the south to the existing trees on that side, which will remain. This will curb all the runoff

on the property. Roof storm water runoff would also comply with the ordinance. Once an actual house is designed for this lot, they will show the exact drainage plan. Some of the storm water runoff from Lot 8.02 will eventually reach Conover Lane, which will flow towards the swale at 24 Conover Lane. If Lot 8.02 is developed in the front, there would be no effect from Lot 8.02, which will continue to drain to the south side of the property. It is his opinion that a dwelling could be constructed on Lot 8.02 without increasing storm water runoff on to adjoining properties.

Mr. McHeffey commented on the building envelope for Lot 8.02, noting the setbacks required under the ordinance for this lot. The trees on Lot 8.02 are all named and numbered on their plan. Twelve trees would need to be removed, mostly Silver and Red Maples. Mr. Foss read from both the borough ordinance and the Monmouth County list regarding large, specimen trees. Mr. McHeffey has determined that there are approximately two specimen trees (Red Maples) that would fall under these lists. Chairman Lospinuso stated that the Board would like to hear what trees would need to be removed within the building envelope. Mr. Foss noted a Scarlett Oak tree that is slightly within the building envelope, but this tree would not need to be taken down, according to Mr. McHeffey. Mr. McHeffey reviewed other large trees within the building envelope, noting that 12 trees would need to be removed – two or three of which are specimen trees.

Councilman Rubin commented that they could not say for certain which trees would need to be taken down, because they did not know exactly where the house would be.

Chairman Lospinuso noted that the Board's problem at the last meeting was that not enough clarity was provided for them to make a decision as to storm water runoff, trees that would be lost, etc. Mr. Foss said they are trying to establish what reasonable measures would be taken to allow for a feasible house to be built on this lot and still minimize the destruction of the trees. There are over 100 trees on the lot, and no home could be built without taking down some trees. They are trying to position the house so that they can save a large number of trees. It is a large building envelope and a large footprint for the house.

Mr. Casazza asked Mr. McHeffey if he had visited the property during or after a rain storm, and Mr. McHeffey said he had not. Mr. Casazza's concern is for the negative impact additional run off would have on Conover Lane. Mr. McHeffey again explained that this area is flat, and new building would not impact Conover Lane at all. The water flows into the front area, and this would not change. The water currently flows to the river, and this would continue.

Mr. Casazza also asked about the specimen trees and if they could get a reasonable house on the lot without removing any trees. Mr. McHeffey said he did not think they could.

Mr. Vaughan asked Mr. McHeffey if it was his opinion that building a new house will have a zero net impact to off site drainage. Mr. McHeffey said no negative impact would be felt.

Mr. Vaughan also asked Mr. McHeffey how many specimen trees would need to come down using the optimum footprint, noting that this was a question that had been asked at the last hearing. Dr. Lospinuso counted close to 30 trees that would need to be removed, although not all were specimen trees. Mr. Foss stated that most of these trees were small and not appealing. The former builder who wanted to purchase this property has decided not to purchase it, and there will be a new builder and developer. Mr. Foss thinks there are three potential specimen trees that are in the center of the total building envelope and would need to come out in order to build a house.

Ms. Heard pointed out that they are not applying at this time for the removal of these specimen trees, which is prohibited under the ordinance. They would need to come back for this variance.

Mrs. Gummer asked Mr. McHeffey if he agreed with the Board's estimate that three specimen trees would need to come down, or did he think there would be more than three. Mr. McHeffey said he did not know the answer to this question.

It was noted that the driveway is situated so that no trees would need to come down.

Mr. York asked Mr. McHeffey about the drainage plan, and he responded that it will remain the same as it exists today – flowing to the south. The grade for the house would be raised about 1' – 2'. Mr. York is concerned with the fact that the southern properties are already affected by flooding when it rains. He asked how Mr. McHeffey could be sure that the quality of life for the people south of Conover Lane would not be made worse, and Mr. McHeffey said he followed the requirements of the ordinance as to the drainage that would be required to make sure no adverse drainage affects these properties.

Mark Halspan, 100 Buena Vista Ave., asked Mr. McHeffey about the drainage on Buena Vista Ave., noting the flooding that occurs in the back of the houses along Buena Vista toward the Shrewsbury River. Mr. McHeffey said he was not there during the rain storm, and he did not witness any flooding as described by Mr. Halspan. He stated that Lot 8.02 does not shed water toward Buena Vista Ave.

Steve Cooper, 16 Conover Lane, asked about the construction entrance, and Mr. McHeffey said it would be on the Conover Lane side. Based on a question from Mrs. Gummer, Mr. McHeffey referred to the topographical lines on his plan, explaining how they determined the flow of water on the site.

Mr. Cooper asked how many trees would need to be removed, and Mr. McHeffey said at least 12 trees would need to be removed.

Donald McDonald, 18 Conover Lane, was sworn in and reviewed the comments heard at the last hearing – all of which were against this application. He said that the overwhelming majority of the neighbors are against this plan or any other that would cause more construction on their block. He again noted that many of the houses recently built on the street have not sold and are sitting there vacant. He does not think the Board should approve the application, since there are preexisting variances that will make the situation worse. The neighbors are against the plan for a subdivision, which will result in additional construction on their street.

Steve Cooper, 16 Conover Lane, was also sworn in and agreed with Mr. McDonald's comments regarding more construction on their street. He said they are fed up with all the construction, and everyone is against this plan.

George Wanat, 14 Conover Lane, was sworn in and spoke to reinforce the objections heard. He does not want the street to change.

No additional comments were heard from the public. Mr. Foss stated that they have been working on this for many months. He understands the comments from the neighbors, and he does not blame them for saying they would like no construction to occur in their neighborhood. They are dealing with a lot that is conforming, since his client was able to buy additional property to afford the land for this subdivision. The law says that no one is required to make sure that an area is kept as a "park-like" setting. The applicant is asking the Board to approve the application with some reasonable nonconformities. The

effect of the economy on the area is not under his client's control. He thinks they have a good plan for a 1 ½ acre lot with many trees. Although some will need to be taken down, their plan attempts to minimize this. Their plan also proposes a drainage plan that abides by the ordinance. They are asking that the application be approved. There is very little in the way of variances (lot circle is within ½' of the requirement). Three pre-existing variances for setbacks occur – all dealing with the existing structure. They are not exacerbating this at all. No new variances will be created on Lot 8.01. Someone will be able to submit plans for a proposed single-family structure on Lot 8.02 and will be able to locate an adequately-sized home on the lot. They would like the Board to approve this subdivision application, and the new owner would provide the construction details to the Board. Although the neighbors would prefer to see a park, the borough cannot impose this. The purpose of the zoning ordinance is to provide more lots that are 1 ½ acres in size, and their application provides two lots of this size, which follows the intent of the zoning ordinance. Mr. Foss does not think the Board should prohibit development on particular lots. At some future date, the property will be sold, and the appropriate building permits will be sought. He thinks their application is reasonable and should be approved.

Mr. Casazza asked about the variances for the specimen trees. Since there is a tree ordinance, he thinks it is not unreasonable for the neighbors to move into an area where there are many trees and think that the trees will remain. Mr. Foss thinks it is common sense to say that if there is a lot without a house, some trees would need to be taken down in order to build a home. He does not think it is reasonable for the neighbors to say that no trees should ever be taken down. The largest specimen tree on the new lot is at the perimeter of the building envelope and would not need to be removed. The trees in the middle of the building envelope would require approval for removal. Not permitting the removal of these trees on a 1 ½ acre lot would mean that no building could occur on the lot.

Mr. Vaughan pointed out that the Tree Ordinance was only approved recently and was not in effect when most of the neighbors bought their homes. Also, the Tree Ordinance is to prevent clear cutting by developers. He thinks the Board could say some specimen trees would need to be removed, and remedial planting steps could be taken. Ms. Heard reminded Mr. Vaughan that the area is already very wooded and requiring additional planting of trees as a remedial issue might be difficult. Mr. McHeffey said there is room on the north property line for potential additional trees. He pointed out that their proposed footprint is the "worse case" scenario. He did not think anyone would build that large a home. It would be in the buyer's best interest to keep as many trees as possible.

Chairman Lospinuso thinks the size of the footprint for the house should be limited to reduce the number of trees that would need to be taken down. He empathizes with the neighbors and would like to see a compromise. He noted that the Board asked for specifics on what could potentially be built. Mr. Foss sees a difficulty with the setbacks required, noting that the two large trees are relatively in the middle of this building envelope. Chairman Lospinuso thinks they need to come to a point where both parties can come to an agreement, possibly by submitting a specific footprint to show the Board.

Mayor Ekdahl thinks the neighbors have a reasonable expectation that the land would remain not built upon. There is a problem in dealing with a concept of what the house and footprint will look like. The rectangle, as shown on the lot, makes it difficult for them. Mr. Foss thinks they have done what the ordinance requires, and saying that a smaller footprint should be provided would make the property less attractive to a potential buyer. He does not think it is reasonable to expect that a nearly-three-acre lot cannot be subdivided in this zone.

Mr. Hewitt thinks the applicant has done what they asked them to do to make the lot buildable. He does not think grading is an issue, and he wondered if the tree issue is enough to deny the application.

Chairman Lospinuso has a problem with the drainage and the removal of the trees. In order to minimize this, a smaller footprint could be provided, which would lessen the storm water runoff.

The issue of the location of the specimen trees was again addressed. The Board does not think there has been adequate testimony as to the identification of the specimen trees on the lot. Chairman Lospinuso noted that the trees were numbered on the original plan; however, they are not numbered on the amended plan for the three lots. Mr. Foss suggested they work with Ms. Heard to provide a plan that better identifies the specimen trees, as it relates to the feasibility of building a house on the lot. All members agreed that additional information on the trees and drainage is needed.

Mr. Vaughan noted that many of the “spec” houses on this street were built before the new Storm Water Management regulations, and they may have contributed to problems with drainage in this area. He would like more information on the trees, also. He thinks the applicant has acted in good faith, and he is not against trying to be reasonable.

Councilman Rubin thinks the drainage was adequately covered, but he is concerned with giving a variance to remove specimen trees, as many negative comments were heard from the neighbors.

Mr. Steib advised that if the application is approved, it would include the removal of the three specimen trees mentioned in the testimony this evening. If a building footprint turns out to involve any other specimen trees, they would need to come back before the Board for approval. Mr. Foss said they would consent to planting additional trees outside the building footprint to replace the trees removed, and a more detailed plan will be submitted to be considered at the July 7<sup>th</sup> meeting. No further notice will be required.

Mr. Vaughan mentioned that the town should be asked to address any construction complaints. He explained that the Board is required to comply with the zoning laws. Any time they have attempted to get more restrictive variance laws, they have met with opposition from property owners.

Mr. Foss will agree to the extension of the time limit in this case.

A short recess was taken at this time (9:25 p.m.).

**Nicholas Adamson, Arthur Adamson, III, & James Adamson, 26 Osprey Lane, Minor Subdivision**

Mr. Steib stated that the service was in order, and the Board has jurisdiction to hear this application. An issue regarding the FAR was raised, and an error was discovered. Arthur Sorenson, attorney, appeared on behalf of the applicants. Walter Bronson, project engineer, was sworn in and stated he is familiar with the T&M report and the comments regarding the necessity for an FAR variance. He referred to the copies of the minor subdivision plat, noting that the allowable floor area was calculated for each of the two proposed lots:

- Lot #1 – 10,747 sq. ft.
- Lot #2 – 10,776 sq. ft.

The FAR shown was miscalculated, and the proposed floor area is less than that allowed for each lot. Ms. Heard explained the miscalculations and said the plans would need to be revised to show the correct numbers. She reviewed the items from the T&M report that still need to be addressed:

- Signature block; (needs to be signed);
- Proof that taxes are paid (this was confirmed);
- Performance guaranty (no objection for a waiver at this time, but one will be required as a condition of any approval).

Councilman Rubin moved to deem the application complete, and Mr. Casazza seconded.

Roll Call Vote: Ayes – Rubin, Casazza, Campbell, Ekdahl, Shanley, York, Gummer, Hewitt, White,  
Lospinuso, Vaughan

Nays – None

Motion carried.

The following exhibits were provided:

- A-1 – Application
- A-2 – Application dated 3/4/08;
- A-3 – NJDEP LOI, dated 11/22/07;
- A-4 – NJDEP Stream Encroachment Permit;
- A-5 – NJDEP Fresh Water Wetlands Plan, dated 2/11/08;
- A-6 – Service letter from JCP&L, dated 12/7/07;
- A-7 – Service letter from NJAWC, dated 12/19/07;
- A-8 & A-9 – Sewer authority letters;
- A-10- Proposed minor subdivision and lot development plan, dated 9/14/07;
- A-11- Completeness review letter from T&M Assoc., dated 4/1/08;
- A-12- Second completeness review letter from T&M Assoc., dated 5/12/08.

Mr. Nicholas Adamson was sworn in and stated that this property is where he grew up. The house was built in 1957. They would like to subdivide the property and sell off one of the lots, enabling him to buy the existing house and move in. Upon a question from the public, Mr. Adamson said that flooding has always occurred on this street, and he explained that he would like to raise the road to take care of 95% of this problem.

Mr. Bronson was sworn in, and his qualifications were accepted by the Board. He described their plan to provide two lots at the end of Osprey Lane. He noted a significant amount of wetlands on the property. The high portion of the existing property is around the existing house and parking area. The existing site is Lot 25, 15.3 acres in size. There is one single family home on the property, as well as a large number of mature trees. They would like to divide the single lot into two lots:

- Lot #1 – 5.55 acres
- Lot #2 – 9.65 acres.

Lot frontage would meet the ordinance requirements. Access to the lots was shown via an existing driveway, which will go to the proposed second house and then continue and branch off to the existing house. The driveway will be raised to 7 ½', not impacting on any wetlands. The raised roadway will help to alleviate some of the flooding problems mentioned previously. Their proposed elevations have already been approved by the DEP. They have tried to make this as conforming as possible. It complies in all respects, except for:

- Lot #1 – 100' setback on Osprey Lane;
- Lot shape requirement deficiency on Lot #1, due to the wetlands on the lot.

The site plan is conceptual in nature, and two 4,000 sq. ft. footprints have been placed on each lot, along with a swimming pool and pool house on each lot. The FAR, building coverage, and lot coverage all conform. They are raising the ground around the houses to elevation 12', according to FEMA regulations. There are no down-stream properties that would be impacted by the proposed development. Any storm water from these two lots would flow out to the Shrewsbury River.

The existing house has full utilities, and the connections to this house will be utilized and extended to the new house. They have obtained the LOI for the property, and the project has been approved by the DEP. A Stream Encroachment permit has also been received. The second variance is for the existing garage, which has a second floor area more than 50% of the first floor. They are asking for a waiver for the planting of street trees along Osprey Lane and Tuxedo Road, as significant trees already exist in these areas. They would agree to comply with all the conditions in the T&M review letter. They will also correct the FAR numbers on their plan.

According to Mr. Bronson, a 9' wide driveway, as proposed, is wide enough for a fire truck; however, Mr. York thinks this width would be very tight for a fire truck. Mr. Bronson said that the paved surface would be 9' wide, with a grass slope that falls away from this, with no obstruction on either side. He thinks as long as the wheels fit the driveway with no other obstructions for the body, it would be sufficient. If they had to widen the driveway, they would need to go back to the DEP regarding the encroachment into the wetlands, or provide a retaining wall to allow the road to get wider. He could firm up the shoulders of the road, so that a fire truck would not sink down. He was asked if he could go back to the DEP to ask for a wider driveway, and he said he would need to file a changed plan, because of the wetlands impact and the change to the approved plan.

Mrs. Campbell suggested they seek advice from the appropriate emergency people in town to get their input. Councilman Rubin does not think there is enough room for a fire truck to turn around. Dr. Lospinuso expressed concern regarding an emergency occurring on this property with this narrow driveway. Mr. Vaughan asked if a wider area could be provided. Mr. Bronson again noted the encroachment problem with the wetlands, stating that there is not any place of sufficient width to provide a driveway that would allow two vehicles to pass. There is no guard rail proposed. Mr. Adamson commented that he has lived on this property off and on for many years, and he has never seen a problem with the driveway width. The proposed parking area would be sufficient for a fire truck to turn around, and this has occurred in the past on this property. Mr. Sorenson pointed out that if the garage were attached, no variance would be needed.

John Ketterer, 15 Osprey Lane, asked about their plan to raise the road and what impact it would have on surrounding properties. Mr. Bronson stated that this would have no affect since the flooding comes from the river.

Mrs. Linda Stewart, 18 Osprey Lane, also questioned the raising of the road, feeling that it would create a levy that would cause the water to flow on to her property.

James Higgins, licensed planner, was sworn in at this time, and the Board accepted his qualifications. He has reviewed the application and zoning ordinances and visited the site. There are three variances for this application:

- Lot circle requirements (both lots), due to the wetlands. This is a classic hardship under the Municipal Land Use Law. He does not see any substantial detriment to the granting of the variance;
- Existing garage second story at over 50% of the first floor area. The applicant has agreed that no plumbing facility would occur in the second floor and it would not be a habitable space. He does not think any significant impact would be felt and there would be a benefit to the granting of this variance.

It is his opinion that the proposed application does not substantially impair the intent or purpose of the Master Plan. The use is permitted, and the lot size exceeds the requirements under the ordinance for this zone.

Mrs. Gummer asked if any specimen trees would need to be removed. Mr. Bronson said there are a number of specimen trees, but no significant specimen trees that would need to be removed. They have noted these on their plan. The most significant tree is a 60" Black Willow, which is not a significant specimen tree.

Mr. Adamson again spoke about the driveway, which was built in 1955. His family has lived on the property since it was built. He reported on the use of the driveway, noting that ambulances and fire trucks have utilized the driveway and had no problem turning around and exiting the property. They have never had to pull any cars out of the wetlands because they drove off the driveway, and there have been no collisions. He would have preferred not to have to raise the driveway; however, this was a requirement of the DEP.

Mr. Shanley asked about the possibility of keeping the existing home, which he would like to see preserved. Mr. Adamson agreed.

Chairman Lospinuso again expressed concern about the width of the driveway. He would hope they would give this some consideration. Mr. York agreed that the driveway should be widened. He would recommend a 12' width. Mr. Bronson does not think the DEP would approve a 12' width, but they may be able to provide a shoulder on each side.

Councilman Rubin noted that any approval by this Board would be conditioned upon the approval by the Fire Department confirming that the driveway would be sufficient at the 9' width. Mr. Vaughan asked Mr. Bronson if the Fire Department provided a letter recommending the driveway be wider, could this possibly serve to affect the DEP's approval.

Linda Stewart, 18 Osprey Lane, asked if the water would drain under the bridge, since the driveway is to be raised. Mr. Bronson said that the drainage area to this location will not change, and the water on each side of the driveway will not get any higher than what presently occurs.

John Ketterer, 15 Osprey Lane, was sworn in and offered his opinion that the overall proposal looks very nice. His only concern is about the flooding issue, and he asked if there was a report from the DEP when approval was granted to raise the driveway. Mr. Bronson said the DEP issues a permit and insures that this project will not affect any other property owners.

Mrs. Campbell has no objections to approving the application, conditioned upon the approval from the Fire Department. Mr. Steib advised that the town requires that any lot be fronted on a street that meets



borough standards and also meets the requirements of emergency vehicles. He would advise that they get the input from the emergency services people.

Mr. Adamson reported that trash is not collected on the property, but is put out to the street.

Mr. Vaughan asked about construction equipment that would be using the roadway, and Mr. Bronson said they will be reinforcing the bridge.

The application will be carried to the July meeting. No further notice will be required.

**Other Business**

Ms. Heard reported on changes to the ordinance regarding outdoor seating at restaurants. Mayor and Counsel will hold a public meeting on this issue.

The Board suggested requiring smaller copies of the plans that they review, along with a few sets of full-sized plans.

There being no further business at this time, motion was made and seconded to adjourn the meeting. Voice Vote: Ayes, unanimous. The meeting was adjourned at 11:00 p.m.

**Next meeting: July 7<sup>th</sup>, 2008, 7:30 p.m.**

Respectfully submitted,

Patricia Murphy